

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CABATECH, LLC
SUITE 108, 5435 BALBOA BLVD
ENCINO, CALIFORNIA 91316

Plaintiff,

V.

**NEXTLIGHT, LLC
4061 CLOUGH WOODS DR.
BATAVIA, OH 45103**

Defendant.

CASE NO. 1:22-cv-00059

JUDGE: Matthew W. McFarland

CABATECH, LLC (“CABATECH” and/or “Counterclaim Defendant”), by and through its attorneys, Wesp Barwell, L.L.C., as and for its Answer to the Amended Counterclaim filed by NEXTLIGHT, LLC (“NextLight” and/or “Counterclaim Plaintiff”) on February 10, 2023, states and avers as follows:

1. CABATECH admits the allegations of paragraph 1 of the Amended Counterclaim.
2. CABATECH admits the allegations of paragraph 2 of the Amended Counterclaim insofar as CABATECH offered Nextlight a warranty on said light fixtures and denies all other allegations in paragraph 2.
3. CABATECH admits that NextLight paid some money towards its outstanding invoice, but is without information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 3 of the Amended Counterclaim and therefore denies same for lack of knowledge.
4. CABATECH denies the allegations of paragraph 4 of the Amended Counterclaim.

5. CABATECH denies the allegations of paragraph 5 of the Amended Counterclaim.
6. CABATECH is without information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 of the Amended Counterclaim and therefore denies same for lack of knowledge.
7. In response to paragraph 7 of the Amended Counterclaim, CABATECH incorporates its responses to the allegations contained above as if fully rewritten herein.
8. In CABATECH's Response to paragraph 8 of the Amended Counterclaim, the documents, including the Agreement and the Warranty, speak for themselves and the statement by NextLight is merely a conclusion of law whereby no response is required.
9. CABATECH denies the allegations of paragraph 9 of the Amended Counterclaim.
10. CABATECH denies the allegations of paragraph 10 of the Amended Counterclaim.
11. CABATECH denies the allegations of paragraph 11 of the Amended Counterclaim.
12. CABATECH denies the allegations of paragraph 12 of the Amended Counterclaim.
13. In response to paragraph 13 of the Amended Counterclaim, CABATECH incorporates its responses to the allegations contained above as if fully rewritten herein.
14. CABATECH admits the allegations of paragraph 14 of the Amended Counterclaim insofar as said products were covered by a warranty and denies all other allegations in paragraph 14.
15. CABATECH denies the allegations of paragraph 15 of the Amended Counterclaim.
16. CABATECH denies the allegations of paragraph 16 of the Amended Counterclaim.
17. CABATECH denies the allegations of paragraph 17 of the Amended Counterclaim.
18. In response to paragraph 18 of the Amended Counterclaim, CABATECH incorporates its responses to the allegations contained above as if fully rewritten herein.

19. CABATECH admits the allegations of paragraph 19 of the Amended Counterclaim insofar as said fixtures were covered by a warranty and denies all other remaining allegations in paragraph 19 of the Amended Counterclaim.
20. CABATECH denies the allegations of paragraph 20 of the Amended Counterclaim.
21. CABATECH denies the allegations of paragraph 21 of the Amended Counterclaim.
22. CABATECH denies the allegations of paragraph 22 of the Amended Counterclaim.
23. In response to paragraph 23 of the Amended Counterclaim, CABATECH incorporates its responses to the allegations contained above as if fully rewritten herein.
24. In CABATECH's response to paragraph 24 of the Amended Counterclaim, the allegations are merely a conclusion of law whereby no response is required.
25. CABATECH is without sufficient evidence to form a belief as to the truth or falsity of the allegations of paragraph 25 of the Amended Counterclaim, and therefore denies the same for lack of knowledge.
26. CABATECH denies the allegations of paragraph 26 of the Amended Counterclaim.

Affirmative Defenses

27. Counterclaim Plaintiff fails to state a claim upon which relief can be granted.
28. Counterclaim Plaintiff has failed to join a party under Ohio Civil Rule 19 and 19.1 and/or indispensable parties.
29. Counterclaim Plaintiff's claims are barred under the doctrines of fraud, lack of clean hands, and/or illegality.
30. Counterclaim Plaintiff's claims are barred by the doctrines of waiver, laches, and estoppel.

31. Any loss or damage suffered by Counterclaim Plaintiff was the result of its own inadequacies, wrongful, improper, negligent, and/or intentional conduct.
32. Counterclaim Plaintiff's claims are barred for insufficiency of process and service of process.
33. Counterclaim Plaintiff's claims are barred by lack of jurisdiction over Counterclaim Defendant.
34. Counterclaim Plaintiff's claims are barred by lack of jurisdiction over the subject matter.
35. Counterclaim Plaintiff's claims are barred by improper venue.
36. Counterclaim Plaintiff's claims are barred in whole or in part by failure to mitigate damages.
37. Counterclaim Plaintiff's claims are barred by acceptance of risk.
38. Counterclaim Plaintiff's claims are barred in whole or in part because the amount of claimed damages is inconsistent and/or incorrect.
39. Counterclaim Plaintiff's claims are barred by actions that voided any warranty, including but not limited to, Modification and Misuse.

General Defenses

40. Plaintiff denies each and every allegation contained in Counterclaim Plaintiff's Amended Counterclaim not expressly admitted herein.
41. Counterclaim Defendant reserves the right to raise any and all additional defenses and affirmative defenses not now known, but which may arise as discovery brings more facts to light.
42. Defendant has waived any additional affirmative defenses not plead in its original Answer or Amended Answer as a matter of course. Pursuant to Fed. R. Civ. P. 12(h)(ii),

Defendant has waived the following additional affirmative defenses, not plead in the Defendant's original Answer: (1) accord and satisfaction, failure of consideration, laches, duress, estoppel, license, payment, release, statute of frauds, recoupment, setoff, and waiver, as added in paragraph 25 of Defendant's Amended Answer; (2) express warranties and/or implied warranties, as added in paragraph 26 of Defendant's Amended Answer; and (3) any additional affirmative defenses added in the by Defendant, as added in paragraph 27 of Defendant's Amended Answer.

WHEREFORE, Counterclaim Defendant respectfully requests that Counterclaim Plaintiff's Amended Counterclaim be dismissed in its entirety and that Counterclaim Defendant recover reasonable attorney's fees and costs in defending against the same.

Respectfully submitted,

/s/ Jessica A. Barwell
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Answer to First Amended Counterclaim was served on all counsel of record via CM/ECF on February 23, 2023.

/s/ Jessica A. Barwell
Jessica A. Barwell (0088716)